



NEW YORK CITY POLICE DEPARTMENT
OFFICE OF DEPUTY COMMISSIONER LEGAL MATTERS

LEGAL BUREAU BULLETIN

Vol. 45, No. 2

September 2015

I. SUBJECT: LAWS OF 2014

II. INTRODUCTION SET FORTH ARE VARIOUS AMENDMENTS AND NEW LAWS
ENACTED DURING 2014 WHICH ARE OF INTEREST TO MEMBERS
OF THE SERVICE

NOTE: New matter is set in *italics*. All new laws are in effect as of the date of publication of this Bulletin unless otherwise indicated. Because of the abbreviated descriptions of new laws contained in this Bulletin, it is strongly recommended that members of the service read the applicable law before taking enforcement action, and direct any questions they may have to the Legal Bureau.

STATE LAWS

AGRICULTURE AND MARKETS LAW

COMPANION ANIMAL STEALING CHAPTER 185

Chapter 185 amends Section 366 of the Agriculture and Markets Law by renaming it from "Dog Stealing" to "Companion Animal Stealing," and by ensuring that all of its provisions apply not only to dogs but also to all "companion animals," defined as any dog or cat, or any other domesticated animal normally maintained in or near the household of the owner or person who cares for it. The new law further amends Section 366 by increasing the maximum fine from \$200 to \$1,000 for the act of stealing a companion animal.

ANIMAL TATTOOING AND PIERCING CHAPTER 479

Chapter 479 amends the Agriculture and Markets Law by adding a new Section 353-f, entitled "Companion Animal Piercing and Tattooing Prohibited." Companion animals are defined as any dog or cat, or any other domesticated animal normally maintained in or near the household of the owner or person who cares for it. The new law prohibits the piercing of a companion animal, unless the piercing provides a medical benefit to the animal and it is

performed by, or under the supervision of, a licensed veterinarian. The law prohibits the tattooing of a companion animal for design purposes, and provides that it is allowable if it is done in conjunction with a medical procedure performed by, or under the supervision of, a licensed veterinarian, or done for identification purposes as part of an animal tattoo identification registry. Any person who knowingly violates these new provisions is guilty of a violation-level offense.

CRIMINAL PROCEDURE LAW

PEACE OFFICER STATUS OF FEDERAL IMMIGRATION AND CUSTOMS OFFICERS CHAPTER 262

Chapter 262 amends two subdivisions of Section 2.15 of the Criminal Procedure Law in order to update several titles of federal officers and agents. Subdivision 3 is amended to provide limited peace officer status to Immigration and Customs Enforcement special agents, deportation officers, and detention and deportation officers. Subdivision 7 is amended to provide this status to United States Customs and Border Protection Officers and United States Customs and Border Protection Border Patrol agents.

PEACE OFFICER STATUS TO US MINT POLICE CHAPTER 459

Chapter 459 amends Section 2.15 of the Criminal Procedure Law by adding a new subdivision 29 to expand the list of federal law enforcement officers given limited State peace officer powers to include United States Mint Police.

PROSTITUTION OFFENSES COMMITTED BY 16- AND 17-YEAR-OLDS CHAPTER 402, CHAPTER 555 OF THE LAWS OF 2013

Chapter 555 of the Laws of 2013, as supplemented and amended by Chapter 402, add to and amend the Criminal Procedure Law and Penal Law as they apply to certain prostitution offenses. The new laws are intended to modify the manner in which persons aged 16 or 17 are treated following an arrest for prostitution or loitering for the purpose of prostitution, in order to provide opportunity for the court to treat the defendant as a sexually exploited child rather than as a criminal.

Where a person is arrested for prostitution (Penal Law Section 230.00) or loitering for the purpose of prostitution (Penal Law Section 240.37(2)), and the person is aged 16 or 17 at the time the offense is committed, Chapter 402 amends CPL Section 170.30 to allow the court to dismiss the charge after arraignment in the interests of justice, if the court determines that the defendant participated in services provided to him or her. This relief is not available to those arrested for loitering for the purpose of patronizing a prostitute or promoting prostitution, but only for those who loiter for the purpose of engaging in prostitution itself.

Parallel amendments are made to CPL Section 170.80 to give the court the authority to conditionally convert the charge against the defendant into a "person in need of supervision"

("PINS") proceeding, for the purpose of requiring the defendant to receive social services. The District Attorney may apply to the court to restore the criminal charge if the court finds that the defendant has failed to cooperate or comply with the conditions imposed as part of the PINS conversion.

Chapter 402 also conforms the CPL's "youthful offender" provisions to ensure that a 16- or 17-year-old convicted of prostitution or loitering for prostitution (excluding loitering to patronize or promote prostitution) will be granted youthful offender status, with records of the charge sealed, notwithstanding whether they may have otherwise not qualified for youthful offender treatment because of other convictions or youthful offender findings against them. CPL Section 720.35(1) is amended to provide that the defendant will be considered a "sexually exploited child" and will not be considered as an adult for purposes of the youthful offender proceeding. Finally, Chapter 402 amends Penal Law Section 60.02 to state that in these cases, if there is a youthful offender adjudication, the court must impose a sentence as if the person is convicted of a violation, and if the court imposes a revocable sentence, it may order any of the specialized services available to a sexually exploited child or which could be ordered in a PINS proceeding.

EDUCATION LAW

EXTENSION OF CUNY TUITION WAIVERS FOR POLICE OFFICERS CHAPTER 69

Chapter 69 extends for two additional years the effectiveness of Education Law Section 6206(7)(c), which directs the City University of New York Board of Trustees to permit members of the NYPD in the rank of police officer, who are enrolled in programs leading to baccalaureate or higher degrees at a senior college, to attend one course without tuition, provided that the course is related to their employment as police officers. The law was extended to July 1, 2016.

ENVIRONMENTAL CONSERVATION LAW

BIG CATS CHAPTER 307

Chapter 307 amends the Environmental Conservation Law by adding new Section 11-0538 which prohibits direct contact between the public and "big cats." "Big cat" is defined in the new law as *any live species of lion, tiger, leopard (with the exception of clouded leopards), jaguar, mountain lion (sometimes called cougar), or any hybrid of such species*. The new law prohibits any licensed or unlicensed person exhibiting animals from knowingly allowing the public to have direct contact with a big cat. "Direct contact" means any physical contact or proximity where physical contact is possible. Violation of the law is a criminal offense and is also punishable by a civil penalty of up to \$500 for a first offense, and \$1,000 for each subsequent offense. The new law does not limit or restrict veterinary examination, treatment or care of a big cat or transportation of the animal for such purpose.

ILLEGAL IVORY AND RHINOCEROS HORN CHAPTER 326

Chapter 326 amends the Environmental Conservation Law by adding new Section 11-0535-a, "Illegal Ivory Articles and Rhinoceros Horns," to prohibit the purchase and sale of ivory articles and rhinoceros horns. The new law defines an "ivory article" as *any item containing raw or worked ivory from any species of elephant or mammoth*. The new law expressly prohibits the sale, purchase, trade, barter, or distribution of ivory articles and rhinoceros horns, except in limited circumstances where permitted by the Environmental Conservation Commissioner, such as if the article is for a bona fide antique, educational, scientific, or musical purpose or if the article is passed to a legal beneficiary, heir, or distributee of an estate.

Violation of Section 11-0535-a is a criminal offense. However, the new law amends ECL Section 71-0924 to make it a class D felony for the sale, trade, barter, or distribution of ivory articles worth in excess of \$25,000. A civil penalty for the violation is also added to Section 71-0925 – for a first violation of Section 11-0535-a, up to \$3,000 or two times the value of the subject material, whichever is greater. For a subsequent violation, the civil penalty is up to \$6,000 or three times the value, whichever is greater.

SPEARFISHING CHAPTER 435

Chapter 435 amends Environmental Conservation Law Section 11-1301(1) to add a new paragraph c, allowing fish to be caught by spear or speargun in the marine and coastal waters of New York State, only for recreational purposes. The paragraph provides that the speargun must be submerged when used to take fish, and that no food fish may be taken by spear or speargun within 100 yards of a public bathing area. "Spearguns" and "under-water guns" are defined as *spearguns that store potential energy provided from the spearfisher's muscles only, and are used while submerged*. Spearguns may use stored energy from the diver's muscles, however, using temporary energy storing devices such as rubber bands, springs, and sealed air chambers.

PENAL LAW

CONTROLLED SUBSTANCES CHAPTERS 31, 36, 37

Chapter 31 amends Penal Law Section 220.65, which is retitled, "Criminal Sale of a Prescription for a Controlled Substance *or of a Controlled Substance by a Practitioner or Pharmacist*." The law adds new subdivision 2 to Penal Law Section 220.65 which states that a person is guilty of a class C felony when, *while being a practitioner or pharmacist, and acting other than in good faith, and while purporting to act within the scope of his or her authority, he or she knowingly and unlawfully sells a controlled substance*.

Chapter 36 amends the Penal Law by adding new Section 178.26, "Fraud and Deceit Related to Controlled Substances," a class A misdemeanor. The new section prohibits several types of fraud, committed willfully, in connection with controlled substances and prescriptions:

- *obtaining or attempting to obtain a controlled substance, a prescription for a controlled substance or an official NYS prescription form through fraud, deceit, misrepresentation, or concealment of a material fact;*
- *making a false statement in a prescription or other document required by the Public Health Law;*
- *falsely assuming the position of a licensed manufacturer, distributor, or other authorized entity, for the purpose of obtaining a controlled substance;*
- *making a false or forged prescription or written order;*
- *affixing a false or forged label to a package containing a controlled substance; or*
- *imprinting or affixing to any controlled substance a false or forged code or symbol.*

New Penal Law Section 178.26 also contains two presumptions in subdivisions 2 and 3. Someone who possesses a false or forged prescription for a controlled substance is presumed to intend to use it for the purpose of illegally obtaining the drug, and someone who possesses a blank NYS official prescription form that was not issued to him or her is presumed to intend to use it for the purpose of illegally obtaining a controlled substance. Finally, subdivision 4 provides that any person who, in the course of treatment is supplied with a controlled substance or a prescription for a controlled substance by one practitioner, who then intentionally withholds that fact and thereby deceives another practitioner into providing a controlled substance or a prescription for a controlled substance, is guilty of violating Section 178.26.

Chapter 37 enacts conforming amendments to the Criminal Procedure Law, adding new Penal Law Section 220.65, Criminal Sale of a Prescription for a Controlled Substance or of a Controlled Substance by a Practitioner or Pharmacist, to the list of crimes for which an eavesdropping or video surveillance warrant may be obtained (Criminal Procedure Law Section 700.05(8)(c)) and which may constitute a “criminal act” for purposes of Enterprise Corruption (Penal Law Section 460.10(1)(a)).

PUBLIC CORRUPTION CHAPTER 55, PART H, SUBPART A

Chapter 55, Part H, Subpart A, entitled the “Public Trust Act,” enacts several provisions intended to address corruption among elected officials and other public servants. Included within the law are several new Penal Law provisions, including a new Article 496, “Corrupting the Government.”

Article 496 contains four degrees of a new crime, “Corrupting the Government.” The fourth degree crime, Penal Law Section 496.02, a class E felony, is committed when, *while being a public servant or acting in concert with a public servant, the person engages in a scheme that is a systematic, ongoing course of conduct with the intent to defraud the State or any political subdivision of the State, with the purpose of obtaining property, services, or other resources, from the State or political subdivision, by false or fraudulent pretenses, representations, or promises, and thereby obtains the property, services or other resources.*

The remaining three degrees of the crime elevate the penalty depending on the value of the property, services or resources obtained: Penal Law 496.03, Corrupting the Government in the 3rd degree, a class D felony, is committed if the value is over \$1,000; Penal Law 496.04, Corrupting the Government in the 2nd degree, a class C felony, is committed if the value is over

\$20,000; and Penal Law 496.05, Corrupting the Government in the 1st degree, a class B felony, is committed if the value is over \$100,000.

The law also enacts a new provision, “Public Corruption,” Penal Law Section 496.06, which is committed *when a public servant (or someone acting in concert with the public servant) commits one of a list of “specified offenses” through the use of his or her public office and the owner of the property involved is the State or a political subdivision.* The “specified offenses” are: Petit Larceny (Penal Law Section 155.25); Grand Larceny in any degree (Penal Law Sections 155.30 through 155.42); and Scheme to Defraud in both degrees (Penal Law Sections 190.60 and 190.65). When a person is convicted of Public Corruption and the underlying specified offense is a class C, D, or E felony, the crime shall be deemed to be one category higher than the specified offense, or one category higher than the attempt or conspiracy to commit the offense, whichever applies.

For all convictions for both Corrupting the Government and Public Corruption, the law increases the potential monetary fine, from the general maximum of double the amount of the offender’s gain from the commission of the crime, to three times the gain.

In addition to creating these new crimes, the law amends several of the Penal Law’s bribery provisions. In both Section 200.03, Bribery in the 2nd degree, and Section 200.11, Bribe Receiving in the 2nd degree, the threshold value for the benefit to be conferred, in order to charge the second degree crime, is lowered from over \$10,000 to over \$5,000. For both first degree crimes (Penal Law Sections 200.04 and 200.12), language is added to make it a class B felony where the bribe or benefit is worth over \$100,000. The law also adds a new crime, “Corrupt Use of Position or Authority,” Penal Law Section 200.56, a class E felony, which prohibits several varieties of corrupt acts related to public office, nomination for public office, and politically-influenced hiring and benefits.

The law also upgrades the penalty for attempted bribery to equal the penalty for the actual bribery. Penal Law Section 110.05 is amended by adding new subdivision 9, which states that it is now a class D felony when the crime attempted is Bribery in the 3rd degree; a class C felony when the crime attempted is Bribery in the 2nd degree; and a class B felony when the crime attempted is Bribery in the 1st degree.

DIRECTING A LASER AT AN AIRCRAFT

CHAPTER 98

Chapter 98 adds two new crimes to the Penal Law, Directing a Laser at an Aircraft, in the 1st and 2nd degrees. The 2nd degree crime, new Penal Law Section 240.76, is a class A misdemeanor. The crime is committed when a person, *with intent to disrupt safe air travel, directs a laser beam either onto a specific aircraft intending to disrupt or interfere with it, or in the immediate vicinity of an aircraft with the intensity of the beam exceeding limits set by the FAA, where a pilot in the aircraft files a “laser incident report” with the FAA.* The 1st degree crime, new Penal Law Section 240.77, is a class E felony, and is committed *when a person commits the 2nd degree crime and thereby causes a significant change of course or other serious disruption to the safe travel of the aircraft that threatens the physical safety of the aircraft’s passengers or crew.*

STALKING BY GPS CHAPTER 184

Chapter 184 amends Penal Law Section 120.45, Stalking in the 4th degree, to expand the meaning of “following” as one element of the crime, to not only have its common meaning but also to include the *unauthorized tracking of a person’s movements or location through the use of a global positioning system (GPS) or other device.*

PUBLIC LEWDNESS CHAPTER 186

Chapter 186 creates Penal Law Section 245.03 to establish a new crime of “Public Lewdness in the 1st degree,” a class A misdemeanor. The crime is committed *when someone 19 years or older intentionally exposes their private or intimate parts to a person 16 years old or younger, in a public place, or in private premises that can be readily observed from a public place or other private premises, in a lewd manner for the purposes of alarming or seriously annoying the victim.*

Alternatively, an individual is guilty of Public Lewdness in the 1st degree if he or she commits the crime of Public Lewdness, Penal Law Section 245.00, and within the preceding year has been convicted of either Public Lewdness or Public Lewdness in the 1st degree.

AGGRAVATED HARASSMENT CHAPTER 188

Chapter 188 amends subdivision 1 of Penal Law Section 240.30, “Aggravated Harassment in the 2nd degree,” in response to a NYS Court of Appeals decision finding the former language of that subdivision to be unconstitutional. Subdivision 1 now states that a person is guilty when, *with the intent to harass another person, he or she communicates, or causes a communication that contains, a threat to cause physical harm to the person, or a member of that person’s family/household, or a threat to cause unlawful harm to the property of the person or member of the person’s family/household.* The types of communications now explicitly include those made by computer or other electronic means. The actor must also have known, or reasonably should have known, that the communication would cause the victim to reasonably fear the threatened harm.

The new law also amends subdivision 2 of Section 240.30 to require an intent to harass or annoy when making a telephone call with no purpose of legitimate communication in order for the crime to be committed. It further amends subdivisions 3 and 4 to retain the original intent of the statute – to harass, annoy, threaten or alarm another person – when the victim is subjected to physical contact or attempted physical contact based on bias (subdivision 3) or when physical injury is caused (subdivision 4).

See FINEST Message No. 9856791, dated August 5, 2014.

UNLAWFUL SURVEILLANCE CHAPTER 193

Chapter 193 adds a new subdivision 5 to Penal Law Section 250.45, Unlawful Surveillance in the 2nd degree, a class E felony. The law is intended to close a loophole which prevented prosecution of the crime under subdivision 1 of Penal Law Section 250.45 because the intimate parts of the victim were not actually exposed. New subdivision 5 applies when, *for his or her own, or another person's amusement, entertainment, profit, sexual arousal or gratification, or to degrade or abuse a person, the offender intentionally installs, or uses, or allows the installation or use, of an imaging device to surreptitiously view, broadcast, or record the victim in an identifiable manner, engaging in sexual conduct, in the same image with the sexual or intimate parts of another person, at a place and time when the person has a reasonable expectation of privacy.* The imaging must have been performed without the person's consent.

ASSAULT AGAINST SCHOOL CROSSING GUARDS CHAPTER 196

Chapter 196 amends subdivisions 3 and 11 of Penal Law Section 120.05, Assault in the 2nd degree, a class D felony, to elevate the penalty for assaulting a School Crossing Guard, from a class A misdemeanor (Assault in the 3rd degree) to the class D felony. Subdivision 3 applies to the situation where a person *intends to prevent a School Crossing Guard from performing a lawful duty and thereby causes a physical injury to the School Crossing Guard.* Subdivision 11 applies where a person *intends to cause a physical injury to a School Crossing Guard and causes such physical injury while the School Crossing Guard is performing an assigned duty.*

ASSAULT AGAINST NYCHA EMPLOYEES CHAPTER 197

Chapter 197 increases the penalties for assaulting an employee of the New York City Housing Authority (NYCHA). Chapter 197 adds two new subdivisions 3-b and 11-b to Penal Law Section 120.05, Assault in the 2nd degree, to elevate the penalty for assaulting a NYCHA employee from a class A misdemeanor (Assault in the 3rd degree) to the class D felony. New subdivision 3-b provides that the crime is committed if a person *intends to prevent a NYCHA employee from performing a lawful duty while on NYCHA property, and thereby causes a physical injury to the employee.* New subdivision 11-b provides that the crime is committed if a person *intends to cause a physical injury to a NYCHA employee who is performing a lawful duty on NYCHA property and causes a physical injury to the employee.*

IMMIGRANT ASSISTANCE SERVICES CHAPTER 206

Chapter 206, the "Immigrant Assistance Service Enforcement Act," amends several sections of the General Business Law, the Executive Law, and the Penal Law, intended to protect immigrants from fraud. General Business Law Article 28-C governs the operation of businesses which provide citizenship and immigration services, and Chapter 206 amends it in several ways to strengthen the notice and other requirements the businesses must comply with, in dealing with this potentially vulnerable population. To that end, the law adds two new Penal Law crimes, "Immigrant Assistant [sic] Services Fraud in the 2nd degree," Section 190.87, a class A

misdemeanor, and “Immigrant Assistance Services Fraud in the 1st degree, Section 190.89, a class E felony.

The second degree crime is committed when the offender intends to defraud someone seeking immigrant assistance services, violates the many prohibitions against threats, false representations, and other misconduct contained in General Business Law Section 460-d, and in so doing wrongfully obtains property from the victim through false pretenses, representations or promises. The first degree crime is committed when the value of the property obtained exceeds \$1,000. Note that violation of any of the prohibitions contained in General Business Law Section 460-d is already a class A misdemeanor.

The new law also amends the Executive Law, adding new Section 94-b, which creates the “Office for New Americans” within the Department of State. This new Office is tasked with, among other responsibilities, creating a network of neighborhood-based “opportunity centers,” increasing access to training in learning English, assisting immigrants in matters relating to their immigration status, connecting immigrants to employment providers, reducing exploitation of immigrants, and establishing a toll-free, multi-lingual hotline for assistance to immigrants. The website for the Office is located at <http://www.newamericans.ny.gov/>.

FIREWORKS

CHAPTER 477

Chapter 477 revises several provisions in the Penal Law pertaining to unlawful possession and sale of fireworks. The new law redefines the terms “fireworks” and “dangerous fireworks” to exclude previously unlawful items from the definition, thereby making such devices legal to sell and use in most of New York State.

Although the general prohibitions on fireworks and dangerous fireworks remain, Chapter 477 amends subdivisions 1, 2, and 3 of Section 270.00 of the Penal Law to remove sparkling devices, flares, toy caps, novelties and other similar devices from the definition of “fireworks” and “dangerous fireworks.” The law also adds new language to define “display fireworks,” “articles pyrotechnic,” and “special effects,” all of which are included under the definition of “fireworks.”

Note that some of the section numbers and provisions of the various fireworks offenses have changed:

- Sale of fireworks or dangerous fireworks, class B misdemeanor, was Penal Law Section 270.00(2)(a)(i) and remains Section 270.00(2)(a)(i).
- Sale of fireworks or dangerous fireworks valued at \$500 or more, class A misdemeanor, was Penal Law Section 270.00(2)(a)(ii) and remains Section 270.00(2)(a)(ii).
- Possession, use or explosion of fireworks or dangerous fireworks, violation-level offense, was Penal Law Section 270.00(b)(i), and is now Section (2)(a)(iii).
- Sale of dangerous fireworks to someone under 18, class A misdemeanor, was Penal Law Section 270.00(2)(b)(ii), and is now Section 270.00(2)(a)(iv), and now applies not only to dangerous fireworks *but also to the sale of fireworks and sparkling devices to someone under 18.*

- Sale of dangerous fireworks to someone under 18 with a prior conviction for the same offense within the previous five years, class E felony, was Penal Law Section 270.00(2)(b)(iii), and is now Section 270.00(2)(b). However the sale of dangerous fireworks is now elevated to a class E felony only if the current crime is the sale of dangerous fireworks to someone under 18, where the prior conviction can be for sale of dangerous fireworks, fireworks or sparkling devices to someone under 18.

The new law further amends Penal Law Section 270.00(2)(c) by raising from \$50 to \$150 the value of fireworks for which a presumption of intent to sell is created.

Chapter 477 provides specific exemptions for New York City. For example, the possession and use, in New York City, of sparkling devices and other novelties (e.g., party poppers, snappers) is still prohibited and in the City they are still characterized as fireworks or dangerous fireworks. Thus, the relevant Penal Law provisions related to the sale and use of these devices still apply.

The new law also amends the Executive Law to create a new licensing scheme which will be administered by the State Office of Fire Prevention and Control for manufacturers and retailers of sparkling devices who wish to do business in the State. Chapter 477 adds Section 392-j to the General Business Law to allow the sale of sparkling devices only by businesses registered with the State, and only during two periods of the year – June 1st through July 5th and December 26th through January 2nd.

See Operations Order 28, series 2015.

PUBLIC HEALTH LAW

OPIOID OVERDOSE PREVENTION CHAPTER 42

Chapter 42 amends the Public Health Law regarding the prescribing, dispensing, and distribution of anti-opioid overdose medications, such as naloxone. The law expands the allowable use of “opioid antagonists,” defined as drugs approved by the Food and Drug Administration that, when administered, negate the pharmacological effects of an opioid in the body. The authorized substances are limited to naloxone and any other medications that have been approved by the NYS Health Department of Health.

The new law authorizes health care professionals and pharmacists to prescribe, dispense, or distribute, either directly or indirectly, opioid antagonists through patient-specific or non-patient specific prescriptions. The new law permits the issuance of such prescriptions to “opioid antagonist recipients,” who are defined as either persons at risk of experiencing an opioid overdose, or family members, friends, or other persons in a position to assist a person experiencing or at risk of experiencing an overdose. They include organizations which are registered by DOH as opioid overdose prevention programs as well.

As long as the opioid antagonist is obtained in accordance with the new law, recipients are permitted to possess and administer it to a person the recipient reasonably believes is

experiencing an overdose. A recipient, acting reasonably and in good faith, will not be subject to criminal, civil, or administrative liability solely for administering the anti-overdose medication. Note that the Department has implemented an extensive program equipping police officers with naloxone kits in order to assist victims of an apparent opioid overdose.

See Operations Order 25, series 2015.

MEDICAL MARIJUANA CHAPTER 90

Chapter 90 amends several laws including the Public Health Law, Penal Law, and Criminal Procedure Law to establish a medical marijuana program for New York State. The program is primarily enacted by new Title 5-A of Public Health Law Article 33, entitled “Medical Use of Marihuana.” In essence, the State Department of Health (DOH) will administer the program, including registering organizations authorized to grow and distribute medical marijuana, certifying the physicians authorized to prescribe it, and certifying the patients and designated caregivers authorized to purchase and possess it. The new law permits DOH to register up to five organizations that can each operate up to four dispensaries statewide; DOH has designated the authorized organizations, which may be found listed on its website at: https://www.health.ny.gov/regulations/medical_marijuana/application/selected_applicants.htm.

The new law limits the “serious conditions” for which the program is available to a defined list of ailments: *cancer, HIV/AIDS, Lou Gehrig’s Disease, Parkinson’s Disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication on intractable spasticity, epilepsy, inflammatory bowel disease, neuropathies, and Huntington’s Disease*. However, the DOH Commissioner is also empowered to add conditions or symptoms to the list.

Patients and designated caregivers will be issued a registry identification card, which will contain the contact information of the certified patient or designated caregiver, the date of issuance and expiration, and a registry identification number for the certified patient or designated caregiver. The card will also contain a photograph of the card recipient and will note any recommendation or limitation on form of dosage imposed by the practitioner. A certified patient may designate up to two designated caregivers, and no person may be a designated caregiver for more than five certified patients.

New Public Health Law Section 3362 states that the possession, acquisition, use, delivery, transfer, transportation, or administration of medical marijuana by a certified patient or designated caregiver possessing a valid registry identification card, for certified medical use, is to be deemed lawful, if the possession meets certain conditions:

- The dosage must be consistent with guidance issued by DOH and the patient is not allowed to possess an amount of medical marijuana in excess of a 30-day supply of the dosage.
- During the last seven days of any 30-day period, the certified patient may also possess up to such amount for the next 30-day period.

- The marijuana that may be possessed by a designated caregiver is to not exceed these quantities for each certified patient for whom the caregiver possesses a valid registry identification card.
- The medical marijuana is to be kept in the original packaging from which it was dispensed, except for the portion removed for immediate consumption for certified medical use.
- Any form of medical marijuana not approved by DOH is prohibited, and the new law expressly notes that the smoking of medical marijuana is prohibited.

Additionally, possession of medical marijuana will be illegal if it is smoked, consumed, vaporized, or grown in a public place, regardless of the form and dosage contained in the patient's certification. Note that the DOH has promulgated detailed regulations regarding the program. The regulations specify that the authorized forms of medical marijuana are liquid, oil, and capsule preparations, and do not include any form of an actual marijuana plant. The regulations are located at:

https://www.health.ny.gov/regulations/medical_marijuana/docs/regulations.pdf.

The DOH will maintain a confidential list of the persons to whom it has issued registry identification cards and may notify any appropriate law enforcement agency of the information relating to any violation or suspected violation of this new law. In appropriate cases, DOH is required to verify to law enforcement personnel whether a registry identification card is valid. Individual identifying information obtained by DOH under this new law is to be deemed confidential and exempt from disclosure under New York's Freedom of Information Law.

Supplementing the program itself, Chapter 90 creates a new Penal Law Article 179, entitled "Criminal Diversion of Medical Marihuana," containing three new crimes outlined below:

- Penal Law Section 179.10, "Criminal Diversion of Medical Marihuana in the 1st degree," makes it a class E felony for a medical practitioner to issue a certification with knowledge or reasonable grounds to know that the recipient has no medical need for the marijuana, or the marijuana is for a purpose other than to treat a serious condition.
- Penal Law Section 179.11, "Criminal Diversion of Medical Marihuana in the 2nd degree," a class B misdemeanor, is committed when a person sells, trades or otherwise provides medical marijuana to another with knowledge or reasonable grounds to know that the recipient has not been registered in the program.
- Penal Law Section 179.15, "Criminal Retention of Medical Marihuana," a class A misdemeanor, prohibits certified patients or designated caregivers from knowingly obtaining, possessing, storing, or maintaining an amount of marijuana in excess of the amount that they are authorized to possess.

Article 179 also contains a good faith exception, Penal Law Section 179.05, stating that Article 179 does not apply to authorized practitioners, registered organizations, and anyone seeking treatment or assisting someone seeking treatment, if they are acting in good faith.

SALE OF LIQUID NICOTINE TO MINORS CHAPTER 542

Chapter 542 amends Public Health Law Section 1399-cc and New York City Administrative Code Section 17-706 to prohibit the sale of “liquid nicotine” to anyone under 18. “Liquid nicotine” is defined as *a liquid composed of nicotine and other chemicals, and which is sold as a product that may be used in an electronic cigarette*. Liquid nicotine will be treated under the law as are all other tobacco products for which sale to minors is similarly prohibited. Violation of the prohibitions contained in the Public Health Law and Administrative Code Section 17-706 are punishable by civil penalties primarily enforced by the Department of Health and Mental Hygiene.

RETIREMENT AND SOCIAL SECURITY LAW

WORLD TRADE CENTER FILING DEADLINE CHAPTER 472

Chapter 472 amends Retirement and Social Security Law Section 2(36)(a), entitled “Qualifying World Trade Center Condition,” to extend to September 11, 2015 the deadline for filing a registration of participation under the World Trade Center Disability Law by members of City retirement systems whose filing deadline was previously set at September 11, 2010.

VEHICLE AND TRAFFIC LAW

SPEED CAMERAS CHAPTER 43

Chapter 43 amends Vehicle and Traffic Law Section 1180-b(a)(1) to increase the number of school speed zones in which New York City is authorized to use speed cameras. Although the primary focus of this legislation is to establish a school zone speed camera demonstration program in Long Island, the new law also increases the number of school speed zones in New York City that may utilize speed cameras from 20 to 140 such zones.

PENALTIES FOR DRIVING WHILE USING A MOBILE TELEPHONE OR PORTABLE ELECTRONIC DEVICE CHAPTER 55, PART B

Chapter 55, Part B enhances the penalties for driving while using a mobile telephone or portable electronic device. Vehicle and Traffic Law Section 1225-c(4), “Use of Mobile Telephones,” is amended to increase the maximum fine for a first conviction to \$200 (from \$150); for a second conviction within 18 months to \$250 (from \$200); and for a third conviction within 18 months to \$450 (from \$400). Identical increases are enacted in the fines for “Use of Portable Electronic Devices,” VTL Section 1225-d (6).

The new law also increases the potential penalties of suspension and revocation of driver's licenses for probationary driver's licenses, class DJ or MJ licenses, and learner's permits, for violations of VTL Sections 1225-c and 1225-d.

DRIVING WHILE INTOXICATED OR IMPAIRED – “VINCE’S LAW” CHAPTER 191

Chapter 191, known as “Vince’s Law,” adds a new subparagraph ii-a to Vehicle and Traffic Law Section 1193(1)(c), to make it a class D felony where a person driving while intoxicated or while impaired by drugs (or drugs combined with alcohol), has had three or more convictions within the prior 15 years among the following offenses: VTL Section 1192(2), (2-a), (3), (4) or (4-a) (Driving while Intoxicated or while Impaired by Drugs (or drugs combined with alcohol)); Penal Law Sections 120.03 and 120.04 (Vehicular Assault in the 2nd and 1st degrees); Penal Law Section 120.04-a (Aggravated Vehicular Assault); Penal Law Sections 125.12 and 125.13 (Vehicular Manslaughter in the 2nd and 1st degrees); and Penal Law Section 125.14 (Aggravated Vehicular Homicide).

VISION ZERO LAW – CITY SPEED LIMIT CHAPTER 248

Chapter 248 amends Vehicle and Traffic Law Section 1642 to authorize New York City to reduce the citywide speed limit from 30 miles per hour to 25 miles per hour. Local Law 54 of 2014 was subsequently enacted to do so, by amending Administrative Code Section 19-177.

LOCAL LAWS

ANIMAL ABUSE REGISTRY LOCAL LAW 4

Local Law 4 amends the Administrative Code, adding new Chapter 16 to Title 17, entitled the “Animal Abuse Registration Act.” The law requires an agency designated by the Mayor (later designated as the NYC Department of Health and Mental Hygiene) to create and maintain an electronic registry of offenders convicted of an animal abuse crime. The law contains a list of crimes which are designated as animal abuse crimes, including several provisions of the Agriculture and Markets Law (for example, animal fighting, torturing or injuring animals, aggravated cruelty, abandonment, poisoning an animal, etc.), as well as Penal Law Section 242.15, Harming a Service Animal in the 1st degree.

The registry is to be treated as confidential, except that it is made available to law enforcement agencies and District Attorneys. It is also available for electronic queries by “authorized entities” having custody of animals, such as humane societies, animal rescue organizations, veterinarians and pet shops. The law prohibits any of these authorized entities from transferring an animal in their custody to any person unless they have consulted the registry and determined that the recipient is not listed. Additional information regarding the registry is available on the DOHMH website, located at:

<http://www.nyc.gov/html/doh/html/environmental/animal-abuse-registry.shtml>.

New Administrative Code Section 17-1603 sets forth the obligations of those required to register as convicted animal abusers, including appearing in person to register and be photographed within five days of their release from imprisonment or sentencing, and appearing yearly for a five-year period, to be photographed again and to verify their contact information. New Section 17-1604 prohibits anyone required to register from owning, possessing, residing with, having custody of, or intentionally engaging in physical contact with any animal. The law applies to anyone convicted of an animal abuse crime on or after October 2, 2014. Violation of either section is a misdemeanor punishable by imprisonment for up to one year and/or a fine of up to \$1,000.

EMPLOYMENT DISCRIMINATION AGAINST INTERNS LOCAL LAW 9

Local Law 9 amends the Administrative Code to prohibit employment discrimination against interns. The new law amends Section 8-102 to define “intern” as *a person who works for an employer on a temporary basis and the work: enhances the person’s employability by providing or supplementing training; provides experience beneficial to the person; and is performed under the close supervision of the employer’s staff.* The term “intern” applies regardless of whether the person receives a salary or not. The new law then extends to interns all of the protections offered by the City’s Human Rights Law against employment discrimination.

VISION ZERO LAW – STUNT BEHAVIOR LOCAL LAW 25

Local Law 25 amends Administrative Code Section 10-163, which is retitled “Speed Contests, Races, and Stunt Behavior,” adding new subdivision a, “Definitions.” This new subdivision defines “engage” or “aid and abet” as *actions or circumstances that reasonably indicate that a race, exhibition, or contest of speed or stunt behavior has occurred or will occur imminently.* The new subdivision also defines “stunt behavior” as *operating a vehicle in a public place or private property that is open to the public, in a manner that unreasonably interferes with other people’s use of public streets and/or endangers the health or safety of the public, the vehicle operator or passengers.* Such actions include accelerating the vehicle to a high rate of speed; performing a “wheelie”; spinning a vehicle rapidly in a circle (“a donut”); and revving the engine, causing unreasonable noise.

The new law also adds new subdivision c, which states that *no one may engage in, or aid someone else in, stunt behavior involving a vehicle, unless provided for in the Vehicle and Traffic Law.* Violation of subdivision b (engaging or aiding or abetting a speed contest) or c (engaging or abetting stunt behavior) is a misdemeanor.

Subdivision d of Section 10-163 is amended to state that except as provided in the VTL, *no person may participate in any event or gathering held for the purpose of a race, exhibition or contest of speed, or stunt behavior involving a vehicle.* “Participating” includes *wagering on the event, or taking specific overt actions encouraging the people engaging in the race, exhibition, or contest.* The law also adds new subdivision e, which states that, except where provided in the VTL, *no person shall operate, drive, or park a motorcycle, whether or not in motion, unless the number plate is easily readable and not obstructed by any part of the motorcycle, its equipment,*

or anything carried on it, including the operator or passenger. Violation of subdivision d (active spectator) or e (motorcycle plate) is a violation-level offense.

VISION ZERO LAW – RIGHT OF WAY LOCAL LAW 29

Local Law 29 adds new Administrative Code Section 19-190, entitled “Right of Way” containing four subdivisions a through d. Subdivision a states that *any driver of a motor vehicle who fails to yield to a pedestrian or a person riding a bicycle who has the right of way is guilty of a traffic infraction*. Subdivision b states that *any driver of a motor vehicle who violates 19-190(a) and whose motor vehicle makes contact with a pedestrian or person riding a bicycle and causes a physical injury, is guilty of a misdemeanor*. Subdivision c states that it is *not a violation of Section 19-190(a) or (b) if the failure to yield and/or the resultant physical injury was not caused by the driver’s failure to exercise due care*. Subdivision d states that new Section 19-190 does not apply to persons, teams, motor vehicles, or other equipment working on behalf of the City of New York while actively engaged in work requiring the presence of a motor vehicle in a location that interferes with the right of way of a pedestrian or person riding a bicycle.

See Interim Order 57, series 2015.

STREET CO-NAMINGS HONORING DECEASED MEMBERS OF THE SERVICE LOCAL LAW 34

Local Law 34 designates honorary names for public thoroughfares in recognition of several individuals, including fallen members of the service:

- Sergeant Keith Ferguson – “Sergeant Keith A. Ferguson Way” is located at Ely Avenue between Hammersley and Adea Avenues in the Bronx.
- Police Officer Robert M. Ehmer – “P.O. Robert M. Ehmer Place” is located at the intersection of 95th Street and 43rd Avenue in Queens.
- Police Officer Brian Murray – “Police Officer Brian Murray Way” is located at the southwest corner of Bleecker Street and Charles Street in Manhattan.

One additional deceased member is also honored:

- Sergeant Peter J. McPolin, Jr. – “NYPD Sgt. Peter J. McPolin, Jr. Way” is located at the northeast corner of Keegans Lane and Greencroft Avenue underneath the Giffords Lane street sign in Staten Island.

Local Law 34 also makes a technical change to a law enacted in 2013 honoring Cadet Salman Hamdani – “Salman Hamdani Way EMT, NYPD Cadet 9-11-01,” located at 204th Street between 35th and 34th Avenues in Queens, is renamed “Salman Hamdani Way.”

The honorary street names contained in the law do not affect the actual names of these streets on the official map of New York City.

MUNICIPAL ID CARD ("IDNYC") LOCAL LAW 35

Local Law 35 adds a new Section 3-115 to the Administrative Code to establish the Municipal Identity Card Program ("IDNYC"). The new law requires that New York City identity cards be made available to any City resident who is able to establish their identity and residency. The card displays the cardholder's photograph, name, date of birth, address, and an expiration date, although special provisions are made to protect the addresses of domestic violence victims. To obtain the card, an individual must establish proof of identity, via one or more official documents that may include a US or foreign passport, US state driver's license, a US permanent resident card, a Social Security card, an electronic benefit transfer card, or a foreign driver's license, as well as proof of residency via documents such as residential leases, mortgage statements, utility bills, employment pay stubs, income tax returns, or written verification issued by a homeless shelter, hospital, health clinic, or social services agency confirming at least 15 days of City residency.

The new law requires the copies of records used to establish identity and residency to be destroyed after two years, except where required to be retained for litigation. The law also provides that information collected from applicants be held confidential to the maximum extent allowed by law, available to law enforcement only through judicial subpoena or warrant.

The new law requires all City agencies to accept the card as proof of identity and residency for access to City services unless acceptance is prohibited by federal or state law, or additional documents are required to obtain the benefits of a federal or state program, or an agency has reasonable grounds to believe that the card is counterfeit, altered, or improperly issued, or the individual presenting the card is not the individual to whom the card was issued. The Police Department has determined that the card may be used to establish identity for the purposes of issuing a summons or a Desk Appearance Ticket.

See Operations Order 55, series 2014; Patrol Guide Sections 208-28, 209-09; FINEST Message No. 14094420, dated March 4, 2015.

VISION ZERO LAW – CIVIL PENALTIES FOR LEAVING THE SCENE LOCAL LAW 50

Local Law 50 adds new Section 19-191 to the Administrative Code, entitled "Civil Penalties for Leaving the Scene of an Incident without Reporting." The civil penalties contemplated by the law relate to violation of Vehicle and Traffic Law Section 600, which obligates motor vehicle operators, who know or have cause to know that property damage or personal injury has been caused due to an incident involving their vehicle, to stop and share their identifying information with the person sustaining the damage. Beyond the penalties imposed by the VTL for violating Section 600, Local Law 50 imposes civil penalties enforceable through a Notice of Violation returnable to the Environmental Control Board.

New Administrative Code Section 19-191 sets forth four levels of civil penalties associated with failure to comply with Vehicle and Traffic Law Section 600. Pursuant to subdivision a, if the incident involves property damage, the driver is liable for a civil penalty of not more than \$500. Pursuant to subdivision b, if the incident involves physical injury, the driver

is liable for a civil penalty of not less than \$1,000 and not more than \$2,000. If the incident involves serious physical injury, the driver is liable for a civil penalty of not less than \$2,000 and not more than \$10,000. If the incident involves death, the driver is liable for a civil penalty of not less than \$5,000 and not more than \$10,000.

VISION ZERO LAW – CITY SPEED LIMIT LOCAL LAW 54

Local Law 54 amends Administrative Code Section 19-177 to reduce the citywide speed limit from 30 miles per hour to 25 miles per hour, pursuant to State legislation authorizing the City to make the change (Chapter 248 of the Laws of 2014).

LIMITATION ON HONORING IMMIGRATION DETAINERS LOCAL LAW 59 AMENDING LOCAL LAW 21 OF 2013

Local Law 21 of 2013 created new Administrative Code Section 14-154, which prohibited the NYPD from honoring a civil immigration detainer forwarded to the Department by Immigration and Customs Enforcement (ICE), either by holding a person beyond the time when the person would ordinarily have been released or by notifying federal immigration authorities of the person's release, unless the person fell within a certain set of enumerated criteria. The criteria allowed for the honoring of a detainer depending upon the pending charges bringing the person within Department custody, or the prior criminal history of the person.

However, in 2014 the criteria were significantly narrowed by Local Law 59, which amends Administrative Code Section 14-154 to prohibit the NYPD from honoring ICE detainers, unless the detainer is accompanied by a "judicial warrant," defined as an arrest warrant based on probable cause, issued by a federal District Court judge or federal magistrate (but not including a federal immigration judge). Further, even when accompanied by a judicial warrant, the detainer must not be honored unless the subject of the warrant is either identified as a possible match in a terrorist screening database, or has been convicted of a "violent or serious" crime as defined in the bill, within the prior five years. The law contains a list of the felonies which constitute "violent or serious" crimes.

Local Law 59 contains a special provision which allows the NYPD to honor a detainer and hold a person up to 48 hours excluding weekends and holidays, without an accompanying judicial warrant, if the subject of the detainer is identified as a possible match in a terrorist screening database, or was convicted of a violent or serious crime and illegally re-entered the country after a previous removal or return (which would generally be indicated on the detainer form itself). This NYPD exception is intended to give ICE an opportunity to provide a supporting judicial warrant within the 48-hour period. If a judicial warrant is ultimately not provided, or the subject of the detainer otherwise does not fit the criteria provided in the new law, the NYPD must release the individual from custody when he or she would normally have been released, and is prohibited from notifying ICE of the subject's release.

See FINEST Message No. 12592188, dated December 11, 2014.

This Legal Bureau Bulletin was prepared by
the Legislative Affairs Unit.